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Docket No.: 28079/41333  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Barton et al.

Confirmation No.: 3375

Application No.: 07/827,906

Group Art Unit: 1638

Filed: January 30, 1992

Examiner: A. R. Kubelik

For: IMPROVED EXPRESSION OF GENES IN  
PLANTS

**PETITION TO EXPUNGE PAPERS FROM FILE  
PURSUANT TO 37 CFR 1.59 (MPEP 724.05)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Attn: TC1600

Dear Madam:

The applicants hereby identify the following Documents filed as part of the accompanying Information Disclosure Statement ("IDS", copy of transmittal letter and complete list of documents attached hereto) as the subject of this conditional petition to expunge pursuant to 37 C.F.R. §1.59.

Litigation	Documents Subject to Protective Order
(1) <u>Mycogen Corp. v. Monsanto Co.</u> , 1:04-CV-0573 DFH-WTL, U.S. District Court for the Southern District of Indiana, filed March 30, 2004.	C4 - C13.
(2) <u>Monsanto Co. v. Mycogen Plant Science, Inc.</u> , 96-133-RRM, U.S. District Court for the District of Delaware, filed March 19, 1996.	C18-C24; C32 -C33; C38-C40; C42-C44; C51-C55; C156-C170.
(3) <u>Mycogen Plant Science, Inc. v. Monsanto Co.</u> , 950653J (LSP), U.S. District Court for the Southern District of California, filed May 19, 1995.	C173; C191- C194.
(4) <u>Mycogen Plant Science, Inc. v. Monsanto Co. et al.</u> , 96-505-RRM, U.S. District Court for the District of Delaware, filed October 22, 1996.	C198-C202; C208-C211; C214-C225; C228-C232; C305.

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The Documents to be expunged, listed in the table above, are subject to one or more protective orders, as explained in the IDS, and have not otherwise been made public. The documents have been packaged and labeled in accordance with MPEP 724.02.

The Applicants commit to retain the Documents for the period of any patent issued on the above-mentioned application with regard to which the Documents are presently submitted.

The petition to expunge is being submitted by (on behalf of) the party in interest, Monsanto Company, St. Louis, MO, who originally caused the Documents to be submitted.

The Commissioner is therefore petitioned under 37 C.F.R. 1.59 to expunge the Documents IF THE DOCUMENTS ARE FOUND NOT TO BE IMPORTANT TO A REASONABLE EXAMINER IN DECIDING WHETHER TO ALLOW THE APPLICATION TO ISSUE AS A PATENT. The Applicants request that the evaluation of the importance of each document (and whether it may properly be expunged) be made individually. Applicants understand that this petition will be held in abeyance until the close of prosecution on the merits (MPEP 724.05 (I) and 724.06).

The fee for this petition in the amount of \$200.00 according to 37 C.F.R. 1.17(g) may be charged to our Deposit Account No. 13-2855, under Order No. 28079/41333.

Dated: February 9, 2009

Respectfully submitted,

By 

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